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Center on Race, Poverty & the Environment California Rural Legal Assistance Foundation

631 Howard St, Suite 330
San Francisco, Ca 94105-3907

Telephone (415) 495-8990
Fax (415) 495-8849

1224 Jefferson St, Suite 25
Delano CA 93215

Telephone (661) 720-9140
Fax (661) 720-9483

Ralph Santiago Abascal (1934-1997)
Director

Luke W. Cole
General Counsel

Ephraim Camacho
Field Coordinator (Fresno)

Caroline Farrell
Attorney (Delano)

Joe Morales
Community Organizer (Delano)

Esmeralda Martinez
Office Manager/Secretary (Delano)

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Carol Browner, Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Ann Goode, Director
Office of Civil Rights
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Re: IWU Negotiating Team v. Arizona Department of Environmental Quality

Dear Administrator Browner and Director Goode:

The Arizona Department of Environmental Quality ("ADEQ") has violated Title VI of the Civil Rights Act of 1964 and the Environmental Protection Agency's implementing regulation, 40 C.F.R. § 7.35, by discriminating on the basis of race throughout the permit hearing process for Innovative Waste Utilization L.L.C. ("IWU") to operate a hazardous waste storage and treatment facility ("HWSTF") in South Phoenix, Arizona. These discriminatory practices are not aberrations: ADEQ's method of administering its hazardous waste permitting authority pursuant to the Resource Conservation and Recovery Act (RCRA), Part B has created and perpetuated a system of discriminatory HWSTF sitings, expansions and permit processes throughout the state. This complaint is being filed against ADEQ by the IWU Negotiating Team, a community group of South Phoenix residents. The IWU Negotiating Team will file documents supporting this complaint in the coming weeks.

I. PARTIES

A. Complainant

The IWU Negotiating Team was formed to coordinate community efforts to address the Innovative Waste Utilization hazardous waste facility's attempt to expand its operations and get a permit from ADEQ. The IWU Negotiating Team is made up of affected residents of the Central Phoenix City Corridor. The affected community is mostly comprised of African Americans and Latinos, but is a diverse, low-income community (see Table I).

B. Respondent Arizona Department of Environmental Quality

ADEQ is the statewide entity responsible for implementing and enforcing Arizona's environmental laws as well as administering federal environmental laws including RCRA, Part B and Title VI of the Civil Rights Act of 1964. ADEQ, as a recipient of federal funds from EPA, is subject to the requirements of Title VI of the Civil Rights Act of 1964.

II. RIPENESS

These claims are timely filed since ADEQ held a defective "public hearing" on IWU's Draft Permit on February 9, 2000, and closed the public comment period on that permit on February 15, 2000, both within the last 180 days. 40 C.F.R. § 7.120(b)(2).

III. CONTEXT

This complaint challenges ADEQ's permitting process for IWU's hazardous waste facility treatment, storage and disposal permit under RCRA, Part B, which will allow IWU to continue to store and treat hazardous waste in South Phoenix, AZ.

In 1995, ADEQ prepared a report which documented and acknowledged the disproportionate impacts that residents of South Phoenix, primarily people of color, bear in comparison to other Arizonans, given the concentration of hazardous waste generators within the area.¹ ADEQ's issuance of the Draft Permit for IWU and its defective hearing are further evidence of the discriminatory impact suffered by the low income community of color in South Phoenix.

¹Pijawka, K. David, John Blair, Subhrajit Guhathakurta, Sarah Lebednik, and Suleiman Ashur, *Environmental Equity in Central Cities: Socioeconomic Dimensions and Planning Strategies*, 18 JOURNAL OF PLANNING EDUCATION AND RESEARCH 113, 116, citing Arizona Department of Environmental Quality, 1995, *South Phoenix Minimization Survey Project*, Phoenix, AZ.

The area immediately surrounding the IWU facility is overwhelmingly people of color, 95% so within a one-mile radius. That percentage declines as one moves away from the facility, to 78% at a three-mile radius, and 67% at a five-mile radius. These demographics demonstrate that irregular permitting activities, such as inadequate notice, hearings or other public involvement concerning the plant, will have a disproportionate impact on the basis of race, as those most affected by the permitting process are almost exclusively people of color.

IWU requested the permit to double the size of its operation, despite the fact that there are already seven contaminated areas on the facility's site, including an arsenic spill. IWU, the third owner of the site in the past 10 years, would not agree to clean up the contamination and potential groundwater pollution unless given permits for the expansion. The contamination at the IWU site was first reported by the EPA in 1990. The 1990 EPA report found 11 areas contaminated with solvents, fuels and metals that are known to cause cancer in humans. Seven of these sites remain contaminated, and ADEQ closed its enforcement action before the other four sites were fully cleaned, instead granting the original operator approval to expand the interim status facility in 1993.

ADEQ's lack of enforcement at the IWU site comes in the context of considerable hazardous waste activity in the immediate neighborhood. ADEQ has given hazardous waste permits to four other facilities in the South Phoenix area -- Safety Kleen,² Onyx Environmental Services,³ Earth Protection Services,⁴ and Salesco Systems USA.⁵ With the exception of Onyx Environmental Service, the four other HWSTFs in South Phoenix are all operating under interim status permits with lax safety requirements. The IWU site has operated under an interim status permit since 1980, for example. Action on the four other HWSTF permits in the area is expected over the next 18 to 24 months. The South Phoenix community is outraged because ADEQ has allowed these facilities to operate for 20 years without an opportunity for public comment or enforcement. ADEQ has engaged in a pattern of discriminatory permitting processes for, and permit granting to, HWSTFs in the overburdened South Phoenix area.

²Safety Kleen operates in a census tract that is 79% people of color.

³Onyx Environmental Services is located in a census tract that is 99% people of color.

⁴The community around Earth Protection Services is 54% people of color.

⁵Salesco Systems USA is also surrounded by a community that is 54% people of color.

**Table I:
The Demographics of Waste Facilities Permitted by
the Arizona Department of Environmental Quality in South Phoenix⁶**

Facility	Percent People of Color within 1 mile	Percent People of Color within 3 miles	Percent People of Color within 5 miles
Onyx	88%	79%	74%
Salesco Systems USA	47%	49%	45%
Earth Protection Services	32%	55%	47%
Lightning Resources (Safety Kleen)	91%	83%	64%
Innovative Waste Utilization	95%	78%	67%

IV. CLAIMS

Title VI of the Civil Rights Act of 1964 provides that "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." 42 U.S.C. § 2000d.

ADEQ, a recipient of federal financial assistance from EPA, has violated Title VI as implemented through EPA's regulations by repeatedly excluding residents of South Phoenix, particularly monolingually Spanish speakers and other residents of this overwhelming minority community, from participating in an adequate and legitimate public hearing process for IWU's Draft Permit.

EPA must ensure that recipients of EPA financial assistance are not subjecting people to discrimination. In particular, EPA's Title VI regulations provide that an EPA aid recipient "shall not use criteria or methods of administering its program which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex." 40 C.F.R. § 7.35(b).

The permitting process is ADEQ's method of discrimination: put simply, ADEQ's

⁶This table is compiled from demographic data obtained by community residents from EPA.

"method of administering its program" yields a discriminatory outcome. As the following sections demonstrate, ADEQ's method of administering its hazardous waste permitting program has resulted in discriminatory impacts in South Phoenix, AZ.

The effect of ADEQ's permitting process is clear: people of color in South Phoenix bear disproportionate impacts from HWSTFs. By granting permits to HWSTFs in communities of color without opening a formal public hearing process to all members of the community, especially monolingual Spanish speakers, ADEQ has administered its program in such a way as to discriminate against people based on race, color, and national origin, in violation of Title VI.

A. ADEQ Descriminated Against Spanish Speakers and Other People of Color Throughout the Permit Process.

On February 9, 2000, ADEQ held a public meeting to provide an opportunity for public comment on IWU's Draft Permit. ADEQ failed to provide notice of this hearing to people who live next to the site. ADEQ prepared a flyer announcing the meeting (in English and Spanish), but then merely dropped the flyer off at the local Bethune School and expected school staff to distribute it. School staff refused to do so, stating that this was not their job, nor was this expectation funded. The format was not of a public hearing, but rather an informal meeting. At this meeting IWU representatives were on the agenda and allowed to speak for almost the first hour. In addition, the announcement that translation would be provided was made only in English and never in Spanish. Because 90% of the surrounding community is monolingual Spanish speaking, community members who traveled to the meeting did not fully understand the message and left because they could not understand what was being provided or discussed. All of these irregularities in the permit process had a disproportionate impact on the residents closest to the site, who are overwhelmingly people of color.

Nor were these irregularities limited to the February 9 meeting. On November 3, 1999, ADEQ conducted its first "public hearing" on the Draft Permit for IWU, at South Mountain High School. The choice of the school guaranteed lower turnout from the affected community, because the school is four miles from area around the IWU site, on the opposite side of a freeway and river. There is a school with adequate room for public assembly immediately within the affected community. Transportation to the hearing at South Mountain High School was difficult since buses do not run later in the evening, and walking to and from the hearing would have presented a hardship to the community, and a disincentive for participation.

Further, on November 3, instead of holding a "public hearing" as required and advertised, ADEQ conducted an informal Question and Answer Session. However, ADEQ was unable to answer any of the question posed by the community. In addition, there was no formal opportunity for anyone in the community to comment on the Draft Permit. Prior to this "hearing", ADEQ refused to provide translators, even though the community around the IWU site is predominately monolingually Spanish speaking. Dennis Clayton of ADEQ responded to the request for translator by saying "to become a U.S. Citizen you must speak English." This "public

hearing," like the February 9, 2000 one, was held in such a way as to effectively eliminate public participation for all community members, but particularly those who spoke only Spanish.

B. ADEQ Discriminated Against Nearby Residents by Misrepresenting the Outcome of the Permitting Process.

During the permitting process, ADEQ staff made statements to the effect that IWU will receive its permit since all the application paperwork has been submitted, regardless of any testimony presented by the public. ADEQ's statement that the IWU permit would be automatically approved had the effect of keeping local residents from participating in the process due to the perceived futility of the endeavor. Most galling to the IWU Negotiating Team, however, is that ADEQ's pronouncements were false. Under ADEQ's Hazardous Waste Permitting Program, HWSTF must comply with federal, state, and local rules regarding hazardous waste treatment. A.A.C. § 18-8-270.13 (I)(9). The City of Phoenix informed ADEQ during the permit process that the site is not in compliance with the Clean Water Act Stormwater Requirements, that it does not comply with the Section 28(1) of the Phoenix City Code, and that the Draft Permit does not contain a Hazardous Materials Management Plan which is required by the Phoenix Uniform Fire Code. Furthermore, there is not an adequate emergency response plan included in the Draft Permit Application. ADEQ's assertions that the permit would be granted despite its possession of evidence to indicate the permit could not be issued – had a disproportionate impact on those living in closest proximity to the site. ADEQ's statements may be evidence of intentional discrimination against the surrounding community.

ADEQ also failed to meet its expressed objectives in its Draft South Phoenix Community Plan for this project. By preventing all members of the low income community of color of South Phoenix from participating in the public hearings for IWU's HWSTF permit application, ADEQ failed in hearing and responding to the concerns of the South Phoenix Community.

V. REMEDIES

In order to provide effective remedies for the patterns of discrimination described in this complaint, the IWU Negotiating Team requests that EPA:

- require that, as a condition of continuing to provide federal financial assistance, ADEQ impose an immediate moratorium on the permitting of any HWSTFs in communities of color, including specifically the approval of the IWU Permit;
- withdraw ADEQ's authorization to administer the Hazardous Waste Permitting Program pursuant to RCRA, Part B program until such a moratorium is in place;
- require, as a condition of continuing to provide federal financial assistance, that ADEQ withdraw any existing permits, and cease issuing any new permits, for new or expanded HWSTFs in communities of color in Arizona;

- permit complainants to initiate and engage in active, collaborative investigation of the foregoing allegations, including the submission of written interrogatories to ADEQ;
- provide complainants with copies of all correspondence to or from the respondent throughout the course of the EPA's investigation, deliberation and disposition of this complaint;
- request ADEQ to end its discriminatory statewide pattern of permitting HWSTFs in communities of color, and that, to this end, request that ADEQ use demographic data in considering permit applications and provide translators for public hearings held in bilingual and monolingual communities;
- sue to compel compliance with the law, to the extent that imposition of the foregoing remedies prove in any way to be ineffectual;
- terminate its assistance to ADEQ, pursuant to 40 C.F.R. §7.25, if ADEQ fails to implement the above requested changes.

VI. CONCLUSION

As this complaint makes clear, communities of color in the South Phoenix area are disproportionately burdened by HWSTFs. ADEQ's permit process for the IWU facility in this area illustrates the discrimination this community experiences. Since ADEQ is a recipient of federal funds, this type of discrimination is prohibited under Title VI of the Civil Rights Act of 1964. The action complained of took place on and after February 9, 2000 and this complaint is thus timely filed.

We look forward to an active investigation by EPA. Please notify us promptly of the schedule for your investigation. Please direct correspondence to Luke Cole, CRPE, 631 Howard Street, Suite 330, San Francisco, CA 94105, and Caroline Farrell, CRPE, 1224 Jefferson Street, Suite 25, Delano, CA 93215.

Sincerely,

CENTER ON RACE, POVERTY & THE
ENVIRONMENT



Luke Cole

Caroline Farrell

Attorneys for the Complainants